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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

In re Z.M. et al., Persons Coming Under the Juvenile Court Law.	B290829 (Los Angeles County Super. Ct. No. 18CCJP02260A-B)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. REGINALD M., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Frank J. Menetrez, Judge. Affirmed.

Cristina Gabrielidis, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Sally Son, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Reginald M. appeals from the juvenile court's disposition order removing his children, five-year-old Z.M. and 18-month-old D.M.,[1] from his physical custody. Reginald argues substantial evidence does not support the juvenile court's disposition order. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Investigation, Petition, and Detention*

On February 18, 2018 the Los Angeles County Department of Children and Family Services received a referral stating Reginald and Dana B., the mother of Z.M. and D.M, had a physical altercation in front of their children. The Department investigated and discovered Reginald and Dana had a long history of domestic violence, although they had not lived together since 2013. In the most recent incident, which occurred on the day of the referral, Reginald had come to Dana's home to take the children for a visit when he and Dana began arguing. While Z.M. and D.M. waited in Dana's car, Reginald damaged Dana's car by kicking it and took Dana's cell phone. When Dana tried to get her cell phone back, Reginald bit Dana on her arm. Reginald took the children from Dana's car and drove away with them. On another occasion in 2016 Reginald got into an argument with Dana and hit her several times with a belt. Z.M. was next to Dana during this incident, but the belt did not strike her. The Department discovered Dana had reported at least four incidents of domestic violence.

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[1] We refer to Reginald's younger child by the first initial of her middle name because her first name also begins with Z.

On March 21, 2018 Dana obtained from the family law court a restraining order against Reginald, which is effective until 2020. The restraining order included a custody and visitation order granting Dana sole physical and legal custody of the children. The order also gave Reginald semiweekly, unmonitored visitation. The restraining order stated that the custody and visitation orders will "remain in effect after the restraining order ends" and that custody and visitation orders "usually end when the child is 18."

On April 9, 2018 the Department filed a petition alleging Z.M. and D.M. were dependents of the juvenile court under Welfare and Institutions Code section 300, subdivisions (a) and (b),[2] because Reginald and Dana had "a history of engaging in violent altercations in the presence of the children" and Dana failed to protect the children by allowing Reginald "to have unlimited access" to them. The Department also submitted a report summarizing its investigation.

The juvenile court found that the Department made a prima facie case the children came within the jurisdiction of the court under section 300 but that there were reasonable services available to prevent detention. The court released the children to Dana and Reginald "subject to the terms of the existing family law custody order" and on condition Reginald remain enrolled in a domestic violence batterers intervention program, enroll in individual counseling, comply with unannounced visits by the Department, have no contact with Dana, stay at least 100 yards from Dana's residence, and not drive the children.

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[2] Statutory references are to the Welfare and Institutions Code.

B. *Jurisdiction, Disposition, and Termination of Jurisdiction*

For the jurisdiction and disposition hearing the Department submitted a report summarizing the findings in its detention report. The Department also reported Z.M. told the social worker that she and D.M. witnessed constant fighting between their parents: "Mommy and Daddy are fighting a lot. . . . When they fight, we stay on the sofa. Then we cry and go to our room. Then we stay in our room. That's our home and that's our room." The jurisdiction and disposition report included a summary of the social worker's interview with Dana, who explained that, while she "was also a participant" in the domestic violence, she fought Reginald "for self-defense." The social worker concluded that "all indications are that [Reginald] initiates [the domestic violence] and is the aggressor." The report included a summary of the social worker's interview with Reginald, who used profanity, disparaged the juvenile court, and indicated an unwillingness to comply with the court-ordered safety plan.[3] The Department recommended the court detain the children from Reginald and continue releasing them to Dana on the conditions the children's visitation with Reginald be monitored and Reginald not reside with Dana.

At the May 23, 2018 jurisdiction hearing Dana pleaded no contest to the petition. Reginald testified that he had been attending domestic violence classes since December 2017 but that the program suspended him for two months because he could not afford to pay the fee. Reginald did not provide a progress report to document the classes he attended. Reginald testified his

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[3] For example, Reginald refused to allow the Department to assess his residence for the children's safety and failed to appear for an on-demand drug test.

domestic violence classes helped him to gain "better insight on what [he] can do in certain situations to . . . not put [himself] in a situation like this." But when asked to explain what he meant by "insight," Reginald stated: "I don't want to be back here. I don't want to come to court no more, go to no domestic violence classes . . . . [J]ust time consuming, wasting a lot [of] my time . . . ." When asked whether he now understood how domestic violence could place his children at risk, Reginald responded: "Physical risk, I can honestly say, no. Mentally, yeah." Reginald testified that he enrolled in a mental health program but that his work schedule has precluded him from attending any classes. The court found Reginald's testimony "self-serving and in various respects not credible."

The court found true the allegation Reginald and Dana engaged in domestic violence in the presence of Z.M. and D.M., sustained the petition under section 300, subdivision (b), and declared Z.M. and D.M. dependents of the juvenile court. The court found that there was a substantial danger to the children's physical health, safety, protection, or physical or emotional well-being if the court returned them to Reginald and that there were no reasonable means to protect them without removing them from him. The court removed Z.M. and D.M. from Reginald's physical custody under sections 361, subdivision (a), and 362, subdivision (a), and ordered Reginald to receive enhancement services and have monitored visitation with the children. Reginald timely appealed the juvenile court's disposition order.

At the six-month review hearing on November 20, 2018, the juvenile court terminated jurisdiction and issued an order granting Dana sole legal and physical custody of the children, with monitored visitation for Reginald. Reginald has appealed this order. (Case No. B294680.)

DISCUSSION

Reginald does not challenge the juvenile court's jurisdiction findings. He argues only that substantial evidence did not support the juvenile court's disposition order removing his children from him. Reginald contends that under section 361, subdivision (c), the juvenile court "erred as there was not clear and convincing evidence of a danger to the children necessitating their removal from [him]."

A. *Applicable Law and Standard of Review*

Section 361, subdivision (a)(1), provides that, after the juvenile court assumes jurisdiction over a child, "the court may limit the control to be exercised over the dependent child by any parent . . . ." (See *In re Anthony Q.* (2016) 5 Cal.App.5th 336, 346.) Section 362, subdivision (a), provides that "the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child . . . ." Section 361, subdivision (c), on which Reginald relies to challenge the juvenile court's removal order, provides: "A dependent child shall not be taken from the physical custody of his or her parents . . . *with whom the child resides at the time the petition was initiated*, unless the juvenile court finds clear and convincing evidence" there would be a "substantial danger" to the child's physical or emotional well-being if the child were returned home and "there are no reasonable means" to protect the child other than by removal. (§ 361, subd. (c), italics added; see *In re Ashly F.* (2014) 225 Cal.App.4th 803, 809.)

Section 361, subdivision (c), does not apply because, at the time the Department filed the petition on April 9, 2018, the children did not reside with Reginald. They resided with Dana,

as required by the family law custody order.[4] "[S]ection 361, subdivision (c), restricts the juvenile court's authority at disposition only when the court is considering removing a dependent child from the physical custody of the parent with whom the child actually resides." (*In re Anthony Q.*, *supra*, 5 Cal.App.5th at p. 350; see *In re Julien H.* (2016) 3 Cal.App.5th 1084, 1089 [section 361, subdivision (c), did not apply because, even though the father had unmonitored weekend visits with his child, the child did not reside with him and the statute """does not, by its terms, encompass the situation of the noncustodial parent"""]; *In re Abram L.* (2013) 219 Cal.App.4th 452, 460 [the juvenile court could not remove children from the father's physical custody under section 361, subdivision (c), "because they were not residing with him when the petition was initiated"]; see also *In re Dakota J.* (2015) 242 Cal.App.4th 619, 628 [the term "resides" in section 361 means "'to dwell permanently or for a considerable time'"].) "In all other circumstances, pursuant to sections 361, subdivision (a), and 362, subdivision (a), orders . . . providing for the care, custody, supervision, conduct and support of that child, including removing the child from the custody of a nonresident custodial parent and determining where that child shall live while under the jurisdiction of the court, are proper so long as the evidentiary record supports the court's findings that the orders are reasonable and necessary for the protection of the child." (*In re Anthony Q.*, at p. 350.)

"We normally review an order removing a child from parental custody for substantial evidence viewing the record in

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[4] Prior to the family law custody order, the children resided with Dana and saw Reginald only "when [Reginald] want[ed] to see them." Reginald does not contend the children resided with him at the time the Department filed the dependency petition.

the light most favorable to the juvenile court's findings." (*In re Anthony Q.*, *supra*, 5 Cal.App.5th at p. 344.) "'[I]ssues of fact and credibility are the province of the trial court.'" (*In re R.T.* (2017) 3 Cal.5th 622, 633.)

B. *Substantial Evidence Supports the Disposition Order*

The facts in the sustained petition are sufficient to show the disposition order was reasonable and necessary for the protection of Z.M. and D.M. (See *In re J.S.* (2014) 228 Cal.App.4th 1483, 1492 ["'[t]he jurisdictional findings are prima facie evidence the minor cannot safely remain in the home'"].) Reginald and Dana have a history of engaging in physical altercations in the presence of the children, but Reginald's "participation in services to address domestic violence [has] not resolved the problems of [his] volatile and violent conduct towards [Dana]." Reginald claimed that beginning in December 2017 he attended domestic violence classes, but two months later he got into another physical fight with Dana and kicked her car so hard he damaged it. (See *In re E.B.* (2010) 184 Cal.App.4th 568, 576 ["'[b]oth common sense and expert opinion indicate spousal abuse is detrimental to children'"].)

Reginald showed little improvement in managing his anger when interacting with Dana, and at disposition he had no desire to take measures to improve. Reginald argues the children would not be at risk under his care because "there [would be] no further contact between [Dana] and [him]." But Reginald's failure to address his violent tendencies put the children at risk, regardless of whether he has future contact with Dana. (See *In re R.C.* (2012) 210 Cal.App.4th 930, 944 [violence after the parents separated showed "the parents' separation did not diminish the risk to the . . . children"].)

Reginald argues the court erred in placing the children with Dana because "[b]oth parents were the cause of the children's dependency." Perhaps they were, but the record shows that Reginald started each fight the Department documented and that Dana acted in self-defense. Moreover, Dana agreed to participate in domestic violence classes and "demonstrated protective capacity by seeking out help." In contrast, Reginald denied his history of domestic violence with Dana, denied that the violence placed his children at physical risk, failed to provide any verification of his attendance of domestic violence classes or participation in individual counseling, and expressed resentment and disdain for the court-ordered programs that would help him curb his violent episodes. Substantial evidence supported the juvenile court's finding that removal was "reasonable and necessary" (*In re Anthony Q.*, *supra*, 5 Cal.App.5th at p. 350) to protect Z.M. and D.M. from physical harm.

DISPOSITION

The disposition order is affirmed.

SEGAL, J.

We concur:

ZELON, Acting P. J.

FEUER, J.